RECEIVED

AUG 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |

**COMMENTS OF TRITON PCS LICENSE COMPANY, L.L.C.**

LAURA H. PHILLIPS
J.G. HARRINGTON
CARLOS M. NALDA

Its Attorneys

**DOW, LOHNES & ALBERTSON, PLLC**
1200 NEW HAMPSHIRE AVENUE, NW
SUITE 800
WASHINGTON, DC 20036
(202) 776-2000

AUGUST 21, 2001

## SUMMARY


Triton PCS ("Triton") is a regional provider of Commercial Mobile Radio Service ("CMRS") in the southeastern United States. Triton has interconnection agreements with nearly twenty Local Exchange Carriers ("LECs") for the exchange and reciprocal transport and termination of CMRS traffic in Triton's regional service area.

This Notice proposes a federal framework for reciprocal compensation that would embrace bill-and-keep as the preferred inter-carrier compensation model. While the Commission's initiative in performing a review of all forms of inter-carrier compensation is commendable, Triton urges the Commission to focus first on establishing bill-and-keep as the "default" compensation model for CMRS and incumbent LEC carrier interconnection.

In light of changes to the Commission's organic statute in 1993, the Commission has unique jurisdiction over CMRS- incumbent LEC interconnection and can immediately make CMRS interconnection arrangements more administratively and economically efficient. The Commission should not and need not keep CMRS interconnection within the framework it established for landline local interconnection under the Telecommunications Act of 1996. This will free CMRS carriers from dealing with numerous state commissions on interconnection when CMRS networks and calling areas operate without regard to state boundaries.

While the rates incumbent LECs charge Triton for reciprocal transport and termination of interconnection have declined, it is obvious that with bill-and-keep all carriers could stop wasting substantial resources auditing and reconciling bills for interconnection. The public interest benefits to bill-and-keep applied to CMRS-incumbent LEC arrangements are

substantial. Bill-and-keep would address the continuing market power of incumbent LECs in shaping the terms of interconnection arrangements with potential competitors and assist in equalizing incumbent LEC and CMRS carrier bargaining positions. The Commission recognized this in late 1995, when it first proposed bill-and-keep between CMRS carriers and incumbent LECs. Triton urges the Commission to adopt bill-and-keep as the "default" compensation arrangement when CMRS carriers do not choose to demonstrate their particular costs for call transport and termination. It is Triton's belief that such a default will be used far more often than would any option for cost-based compensation.

Even after adopting bill-and-keep for CMRS-LEC interconnection, the Commission cannot withdraw from regulation of CMRS-LEC interconnection relationships. Because incumbent LECs will continue to have substantial market power, they will be able to impose unreasonable terms and conditions on competitors. Incumbent LECs will continue to have by far the largest networks and number of subscribers, and even assuming there are other competitive networks, CMRS carriers will have to interconnect to incumbent LECs to serve wireless customers. The Commission will have to be vigilant to prevent incumbent LECs from discriminating against traffic that is interconnected, versus traffic that is originated and terminated within the incumbent LEC's own network.

Another area of concern for CMRS carriers is the continuing availability of "transit" arrangements among large incumbent LECs, smaller, more rural incumbent LECs and CMRS carriers to ensure the exchange of CMRS traffic within MTAs. Although transit traffic is a small portion of the overall traffic that Triton exchanges for termination, any refusal by an incumbent LEC to carry or terminate transit traffic would impose extremely inefficient direct trunking arrangements on CMRS carriers. As no other carrier is required to have direct connections to every other carrier – and indeed any such requirement would overextend the trunking capacity of all carriers – incumbent LECs should not be in a position to insist that CMRS carriers incur the prohibitively expensive cost of direct interconnection to all incumbent LECs within an MTA. Any such requirement would be grossly anti-competitive.

Finally, the costs some incumbent LECs impose for physical interconnection facilities are at odds with Commission precedent that carriers should share the costs of interconnecting trunks in proportion to their relative use. Incumbent LECs should never be in a position where they can insist that CMRS carriers pay entirely for a physical interconnection facility that benefits both parties.

## TABLE OF CONTENTS

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | CC Docket No. 01-92 |
| Developing a Unified Intercarrier | ) | |
| Compensation Regime | ) | |

**COMMENTS OF TRITON PCS LICENSE COMPANY. L.L.C.**

Triton PCS License Company, L.L.C. ("Triton"), by its attorneys, hereby submits its comments in the above-referenced proceeding.' In the *NPRM*, the Commission seeks comment on the feasibility of adopting a unified bill-and-keep approach for intercarrier compensation associated with the interconnection of telecommunications networks. Although the *NPRM* raises a wide range of intercarrier compensation issues, these comments focus primarily on the interconnection relationships among local exchange carriers ("LECs") and Commercial Mobile Radio Service ("CMRS") providers. As discussed below, Triton supports the adoption of a bill-and-keep regime for CMRS-LEC interconnection and action to ensure that CMRS providers can obtain reasonable terms and conditions for all aspects of interconnection.

## I. INTRODUCTION

Through its parent, Triton PCS Holding Company, Inc., Triton is the first member of the AT&T Wireless Services, Inc. ("AT&T") network of affiliates, and markets its wireless services under the brand SunCom. Triton is licensed to provide digital wireless service in an area covering approximately 13 million people in Virginia, North and South Carolina, northern Georgia, northeastern Tennessee and southern Kentucky. Triton currently operates a network

[1] Developing a Unified Intercarrier Compensation Regime, ***Notice of*** *Proposed* ***Rulemaking,*** CC Docket No. 01-92, FCC 01-132, rel. April 27,2001 (the "*NPRM*").

consisting of seven mobile switches and over 1,500 cell sites and its network and subscriber base continue to grow.

Triton interconnects, directly and through transiting arrangements, with dozens of incumbent LECs ("ILECs"), including a number of smaller, more rural landline local exchange carriers, and has executed approximately twenty interconnection agreements for the reciprocal termination of local traffic. While the terms and conditions of these agreements vary, in Triton's experience one constant remains: ILECs hold a bargaining position that is far superior to CMRS providers in negotiating interconnection arrangements. Because end users typically subscribe to only one LEC and ILECs have access to the vast majority of local subscribers, ILECs have a monopoly on termination of local calls in their respective service areas. Further, since Triton has no real alternative to dealing with the ILECs, it has been forced to accept disadvantageous terms in many of its interconnection agreements, ranging from arduous physical interconnection requirements to termination fees as high as **2.6** cents per minute, simply to provide local landline connectivity to its wireless customers.

Adopting a bill-and-keep regime for CMRS-LEC reciprocal compensation would be a significant step towards leveling the interconnection playing field between LECs and CMRS providers. In addition, bill-and-keep would create operational efficiencies for all carriers, provide enhanced certainty and uniformity in interconnection arrangements, and ease the administrative burden of regulating this aspect of CMRS-LEC interconnection.

However, bill-and-keep is not a panacea for all CMRS-LEC interconnection issues. For example, in addition to establishing bill-and-keep as the default reciprocal compensation regime, the Commission should permit to CMRS carriers to rebut this presumption by demonstrating higher termination costs and thus to obtain asymmetrical reciprocal compensation based on each carrier's respective cost of call termination. The Commission also should exercise its statutory authority over CMRS to establish guidelines and to clarify existing requirements for other elements of the CMRS-LEC interconnection relationship, including transiting and the terms and conditions of physical interconnection. Finally, because ILECs continue to exert significant market power through their terminating access monopolies, under no circumstances should the Commission forbear from regulating CMRS-ILEC interconnection.

## 11. THE COMMISSION HAS FULL AUTHORITY OVER CMRS-LEC INTERCONNECTION

The *NPRM* seeks comment on the scope of the Commission's jurisdiction under Section 332 of the Communications Act of 1934 (the "Act"), and whether it has authority under Section 332 adopt a bill-and-keep regime for CMRS-LEC interconnection.' As described below, the Act provides the Commission with plenary jurisdiction over CMRS, and thus empowers the Commission to adopt bill-and-keep as the compensation model for CMRS-LEC interconnection.

Several provisions of the Act, as amended by the 1993 Budget Act, are relevant to the issue of the Commission's jurisdiction over CMRS. First, Section 332(c)(3) expressly limits the states' role in regulating CMRS by prohibiting them from regulating CMRS entry or rates, while permitting them to regulate other terms and conditions of CMRS service.[3] Second, Section 332(c)(1)(B) expressly grants the Commission authority to order carriers to interconnect with CMRS providers.[4] Finally, the 1993 Budget Act amended Section 2(b) of the Act, which generally reserves to the states jurisdiction over intrastate communication service, to exempt

[2] ***NPRM,*** ¶85.

[3] **47** U.S.C. § 332(c)(3).

[4] 47 U.S.C. § 332(c)(1)(B).

Section 332 (including the CMRS-LEC interconnection provisions) from the reservation of state authority contained in Section 2(b).[5]

In the *Local Competition **Order,*** the Commission recognized that it **has** jurisdiction to regulate CMRS-LEC interconnection pursuant to Section 332.[6] In that decision, the Commission promulgated rules governing CMRS-LEC interconnection under Sections 251 and 252 of the Act, but did not define precisely its jurisdiction over CMRS-LEC interconnection under Sections 251 and 332. However, the Commission made plain that it was not rejecting Section 332 as an independent basis for jurisdiction, and reserved the right to invoke its jurisdiction under Section 332 to regulate CMRS-LEC interconnection if circumstances should warrant.[7] Indeed, the Commission indicated that it would consider exercising such jurisdiction to regulate CMRS-LEC interconnection rates if the regulatory scheme established by Sections 251 and 252 did not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on just, reasonable and nondiscriminatory terms and conditions.*

The U.S. Court of Appeals for the Eighth Circuit agreed that Section 332(c), read in combination with Section 2(b), gives the Commission independent authority to promulgate rules governing CMRS-LEC interconnection. In ***Iowa** Utils. Bd. v. FCC*, the court upheld the authority of the Commission to establish nationwide interconnection rules for CMRS-LEC

---

[5] **47** U.S.C. § 152(b).

[6] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order, 11* FCC Rcd 15499, 16005-06 (1996) *("'LocalCompetition Order"), aff'd.* in relevant part ***Iowa** Utils. Bd. v. FCC,* 120 F.3d 753 (8th Cir. 1997) (subsequent history omitted).

[7] *Id.*

[8] *Id.*

interconnection under Sections 201 and 332(c)(1)(B) of the Act.[9] Thus, that decision confirms that the Commission has plenary jurisdiction over CMRS-LEC interconnection, including the rates that are charged for interconnection.

It is evident that the Commission possesses the authority to adopt bill-and-keep as the preferred CMRS-LEC interconnection regime and take any other action to ensure that the terms and conditions of CMRS-LEC interconnection are just and reasonable. In particular, because Section 332(c)(1)(B) confers independent interconnection authority, the Commission is not limited by the provisions of Sections 251 and 252 of the Act when setting the parameters of CMRS-LEC interconnection. This distinction is significant. Among other things, it means that the Commission's concerns about the lawfulness of adopting a bill-and-keep regime under Sections 251 and 252 do not apply to terms, procedures or process used to achieve CMRS-LEC interconnection arrangements. It also means that the Commission need not depend on state commissions to implement any rules it adopts for CMRS-LEC interconnection, but instead can act directly to ensure that an appropriate regime is put in place. This would be a significant benefit to CMRS providers, who do not operate using state boundaries and whose service areas are interstate in scope. Indeed, Triton could realize additional economies if it could maintain a single interconnection arrangement with multi-state ILECs such as Verizon and BellSouth.

## III. THE COMMISSION SHOULD ADOPT BILL AND KEEP AS THE "DEFAULT" CMRS-LEC RECIPROCAL COMPENSATION REGIME

In late 1995, the Commission initiated a rulemaking proceeding in which it tentatively concluded that it should adopt bill-and-keep as an interim uniform federal mutual compensation

[9] *Iowa Utils. Bd. v. FCC,* 120 F.3d at 800 n.21; *aff'd in part and rev'd in part* ***sub*** *nom.,* AT& T *Corp. v. Iowa Utilities Bd.,* 525 U.S. 366 (1999). The portion of the Eighth Circuit decision relating to Section 332 was not appealed to the Supreme Court or otherwise affected by the *AT&T* decision.

arrangement for the exchange of local traffic between ILECs and CMRS providers." Shortly thereafter, Congress enacted the Telecommunications Act of 1996, which required the Commission to implement new interconnection requirements and other statutory provisions in an effort to enhance telecommunications competition. Given the abbreviated time frame for implementing the Telecommunications Act's local interconnection provisions, the Commission declined to adopt a uniform federal compensation standard for CMRS-LEC interconnection and instead opted to subject CMRS interconnection to the same state-supervised framework that governs the interconnection of landline carriers.[11] In the context of implementing this new regulatory regime, however, the Commission preserved the possibility of adopting bill-and-keep as the appropriate model for intercarrier compensation and reiterated that it would revisit allowing states to supervise CMRS interconnection if the Section 251 and 252 framework as applied by fifty separate states proved unreasonable or discriminatory to CMRS carriers.[12]

The Commission now has the opportunity to revisit the issue of CMRS-LEC interconnection. Although interconnection charges generally have declined since implementation of the Telecommunications Act, Triton and other CMRS providers still have experienced difficulty in obtaining interconnection on commercially reasonable terms and conditions due to the market power possessed by LECs. In addition, despite the inherently interstate nature of CMRS, Triton and other providers are faced with inconsistent state-by-state regulation of interconnection and widely varying interconnection costs. Thus, the same factors

10 Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, ***Notice of Proposed Rulemaking***, 11 FCC Rcd 5020 (1996) (***"CMRS Interconnection Notice").***

11 ***See Local Competition Order***, ¶¶999-1026.

12 The Commission's rules currently permit the adoption of a bill-and-keep methodology by state commissions if: (i) the presumption of symmetrical rates has not been rebutted; and (ii) the amount of traffic carriers exchange is approximately in balance. 47 C.F.R. § 51.713.

that supported the Commission's tentative conclusion in 1995 now support the adoption bill-and-keep for CMRS as a uniform, federal interconnection standard pursuant to the Commission authority under Section 332 of the Communications Act.

For the reasons described below, the Commission should adopt this regime as the default compensation regime, with a presumption that bill-and-keep will apply unless the CMRS provider can show that it faces significantly greater costs for interconnection than the LEC with which it interconnects. Adoption of this regime will meet the goals that the Commission articulated in 1995, to the benefit of consumers of wireless and landline services.

### A. Bill-and-Keep for CMRS Traffic Will Result in Substantial Public Interest Benefits.

Adoption of a "default" bill-and-keep arrangement for CMRS-LEC interconnection will result in a number of important public interest benefits. As shown below, these benefits include cost savings, increased certainty and consistency, and equalization of the bargaining power between CMRS providers and ILECs. Conversely, it is unlikely that any cognizable harm would result from adopting a regulatory presumption in favor of bill-and-keep.

First, adopting a bill-and-keep regime will lead to substantial cost savings for both CMRS providers and LECs. For example, adopting bill-and-keep will eliminate the need for monitoring and billing functions associated with the exchange of interconnection traffic. It also will allow service providers to avoid expending resources for various other administrative functions, such as audits, that can be necessary when carriers have to account for their reciprocal compensation charges. These cost savings will enable carriers to devote additional resources to providing competitive telecommunications services. This is particularly significant for service providers that are managing substantial growth, such as Triton. Freeing up resources that could be used to build new cell sites or to otherwise improve service quality is likely to have substantial consumer benefits.

CMRS providers and LECs also would benefit from a more stable and predictable interconnection regime. Today, reciprocal compensation rates are subject to change and can vary substantially from one carrier to another. These rates also are subject to renegotiation periodically. The uncertainty of the terms of interconnection and reciprocal compensation makes it difficult for any service provider to plan for the future, and the effect of this uncertainty is greater for smaller, growing providers than for an established ILEC with a stable customer base. Bill-and-keep effectively would eliminate inconsistent state-by-state regulation of interconnection arrangements and the widely varying interconnection costs incurred by CMRS providers.

In addition, bill-and-keep would help equalize the bargaining power between ILECs and CMRS providers. Today, CMRS providers often are faced with reciprocal compensation rates that ILECs will not negotiate and CMRS providers have no real option to change them. It often is economically irrational for CMRS providers to attempt to reduce the rates they are charged for reciprocal compensation through either negotiation or arbitration. This is particularly true when a CMRS provider is interconnecting with a rural ILEC: When traffic levels between two carriers are low, the costs of protracted negotiations, let alone the costs of arbitrating reciprocal compensation rates, can far exceed the benefits that might flow from rate reductions. In addition, when a CMRS provider is seeking to enter a new market, the costs of delays can be so high as to preclude any negotiation. ILECs, on the other hand, have no incentive to negotiate fair terms – or even to negotiate at all – because their success does not depend on providing their customers with access to CMRS subscribers.

Bill-and-keep also would facilitate the efficient and effective provision of competitive CMRS services to public. As noted above, the cost savings that will result from a bill-and-keep regime will allow CMRS providers to serve customers better. In addition, these savings are likely to contribute to maintaining reasonable rates, especially in the vibrantly competitive wireless service marketplace. Regulatory stability and the elimination of the difficulties of negotiating the terms for reciprocal compensation also will allow CMRS providers to concentrate on improving service, rather than expending effort to adapt to changing reciprocal compensation arrangements and to respond to ILEC demands. Indeed, reducing transaction costs by eliminating unnecessary administrative burdens has obvious public interest benefits because those costs only reduce economic efficiency.

Applying bill-and-keep as the "default" compensation rate for CMRS-LEC interconnection would not have any cognizable adverse effects. First, a bill-and-keep regime would have no impact on universal service because carriers' assessments are based on end-user telecommunications revenue. Interconnection payments are carrier to carrier payments, which are excluded from the federal universal service program assessment. Indeed, to the extent that adoption of a bill-and-keep regime stimulates demand for wireless service, universal service support mechanisms could benefit because the costs would be spread across **a** greater revenue base. Moreover, elimination of reciprocal compensation payments would avoid the possibility of regulatory arbitrage or economic distortion that could result from other reciprocal compensation regimes.

In addition, while ILECs would lose some reciprocal compensation revenue, there is no reason to believe that CMRS reciprocal compensation revenue is important to ILECs. In fact, many ILECs have elected, under the terms of the Commission's *ISP-Bound Traffic* ***Order,*** *to* apply reduced reciprocal compensation rates to CMRS providers, thereby voluntarily reducing their reciprocal compensation revenues to a fraction of former levels. At the same time, ILEC revenues from CMRS interconnection have been declining as CMRS traffic have steadily approached a 50-50 ratio of traffic exchanged for termination. Thus, it is unlikely that adopting a bill-and-keep regime would have any meaningful adverse effect on ILECs.

### B. The Commission Should Maintain the Option for CMRS Providers to Demonstrate Higher Termination Costs and Obtain Asymmetrical Reciprocal Compensation.

While adoption of bill-and-keep as the "default" compensation model is a reasonable approach to compensation for CMRS-LEC interconnection traffic, it should not be the only option available for CMRS reciprocal compensation. Under some circumstances, it may be appropriate for CMRS providers and LECs to exchange traffic at asymmetrical rates based on the costs of each carrier. The Commission should ensure that this option remains open to CMRS providers.

While bill-and-keep compensation makes sense when interconnecting carriers have similar costs, that is not always the case, Different types of networks may have different costs that might logically result in each carrier assessing asymmetrical interconnection charges. CMRS providers, in particular, still serve relatively small numbers of customers compared to ILECs and often face higher traffic sensitive network costs to terminate calls to their subscribers. In such circumstances, the Commission should permit carriers to demonstrate these costs and exchange interconnection traffic on an asymmetrical reciprocal compensation basis. Otherwise, a carrier may be subject to an unreasonable obligation to bear costs that are imposed on it by other carriers. In this connection, Sprint PCS has undertaken a number of state-by-state arbitrations to demonstrate that its costs of termination are higher than those of ILECs and establish that asymmetrical compensation is warranted. These proceedings provide a framework that could be used to establish that any CMRS provider bears disproportionately high costs for terminating ILEC-originated traffic should be covered by asymmetrical reciprocal compensation payments.

The Commission can maintain this option for CMRS providers by adopting bill-and-keep as the presumptive, not conclusive, form of reciprocal compensation. Upon a showing that a CMRS provider's traffic sensitive costs of transport and termination exceed those incurred by the interconnecting LEC, the carriers should resume reciprocal compensation payments but use asymmetrical rates. This approach will make bill-and-keep the norm, but preserve the ability of CMRS carriers that are subject to extraordinary burdens to be compensated. Because bill-and-keep will greatly reduce accounting, billing and other administrative costs, it is likely that CMRS providers will seek to reinstate reciprocal compensation only in the most exceptional circumstances. Retaining the option for asymmetrical compensation, however, will address those circumstances without placing the burden of an actual compensation framework on all CMRS providers.

### C. The Commission Must Remain Vigilant With Respect to CMRS-ILEC Relationships Even After the Move to Bill-and-Keep.

Adopting bill-and-keep as the "default" compensation model for CMRS-LEC interconnection would represent a significant step towards addressing the unequal bargaining power between CMRS providers and LECs. However, even after bill-and-keep is adopted, ILECs will continue to have substantial market power and thus an ability to impose unreasonable terms and conditions on customers and competitors alike. As a result, the Commission must remain vigilant to ensure that LECs do not use their market power to disadvantage CMRS carriers and stifle competition.

There can be no question that ILECs retain significant market power in the CMRS-ILEC relationship. When it adopted the *Local* ***Competition Order*** in 1996, the Commission recognized the extent of ILEC market power.[13] While there has been some progress since that time, ILECs still have overwhelming market shares in the local telecommunications marketplace, and generally serve nearly all landline customers. **A** CMRS provider cannot hope to be successful if it does not have the means to exchange traffic, either directly or indirectly, with all ILECs with in its service area; the opposite, however, is not the case because ILEC customers do not depend on access to wireless subscribers. This imbalance in market presence leads inevitably to **an** imbalance in the ability of ILECs and CMRS providers to negotiate favorable terms for interconnection.

Moreover, there are a number of areas outside the CMRS-LEC reciprocal compensation relationship that could be subject to potential anticompetitve behavior. For example, it is conceivable that a LEC could attempt to impose a per-call surcharge on its landline customers for calling wireless customers under the rubric of "cost recovery." Any form of such an off-network surcharge would be extremely damaging to competition and should be prohibited by Commission rule.

Continuing ILEC market power also is reflected in the rate ILECs charge Triton for interconnection. Triton has been charged as much as 2.6 cents per minute for "reciprocal compensation," a rate that exceeds all but the highest ILEC terminating access charges. While Triton believes that reciprocal compensation rates at this level are excessive, as previously discussed, there often is no practical way to challenge excessive rates.

13 ***See, e.g.***, *Local* ***Competition Order,*** ¶¶ 55, 141.

ILECs also can exert their power over CMRS providers by controlling transit traffic arrangements. The maintenance of commercially reasonable transit traffic arrangements is critical to CMRS carriers. Although transit traffic is a small portion of Triton's overall traffic that is exchanged for termination, it would be prohibitively expensive for Triton to maintain direct connections to each ILEC that may be present in a particular Triton service area, but to whom Triton has relatively small call volumes. Thus, transiting traffic using interconnection provided by one or more large ILECs is often the only economically justifiable way for a CMRS provider to receive or to terminate calls in rural areas. ILECs must not be permitted to withdraw from existing transit arrangements, because use of indirect interconnection and transit can be the most efficient way to interconnect to small rural ILECs.

If transit arrangements are not already available, CMRS providers are beginning to experience difficulties in obtaining it.[14] These difficulties may come in the form of refusal of the transiting ILEC to carry the traffic or demands by small ILECs for direct interconnection, even when the volume of traffic is so low as to make direct interconnection impracticable. Triton bases its decisions about where to interconnect directly on all relevant factors, including volume of traffic, customer needs for local telephone numbers and Triton's coverage in the affected area. ILECs sometimes attempt to trump these considerations, however, by insisting on direct connection as a condition of interconnecting at all (in the case of the terminating ILEC) or whenever traffic exceeds an often-arbitrary threshold that typically is so low that it is economically inefficient to do so.

In other cases, a rural ILEC that terminates traffic to a CMRS provider will refuse to pay the cost of transiting, which forces the CMRS provider either to bear transiting costs in both

[14] For example, Triton understands that some major ILECs are refusing to provide transit services as they renegotiate interconnection arrangements with other CMRS providers.

directions or to cut off calls to its customer from the rural ILEC's subscribers. Neither of these approaches is satisfactory because neither recognizes the CMRS provider's status as a co-carrier, entitled to treatment no worse than that afforded any other carrier. Both of these approaches also inappropriately place the burden of interconnection on the customers of the *CMRS* provider, when both CMRS and rural ILEC customers benefit from the exchange of traffic.

Triton has no objection, of course, to paying the actual costs incurred to transport traffic over a transiting LEC's facilities to an indirectly interconnected ILEC. Triton, like any other carrier, should pay for the transport service it receives. Triton (or any other CMRS provider) should not be treated as inferior to another carrier, however, merely because that carrier has and maintains market power. Thus, transiting charges should be shared by the carriers that use the transiting service to exchange traffic." Further, Triton should not be denied the opportunity to use transit services when doing so is economically efficient. Arbitrary and unreasonable limitations on transiting should be prohibited.

Finally, Triton also has experienced excessive charges from ILECs for the physical interconnection facilities themselves. While many ILECs acknowledge that interconnection facilities benefit both parties, and pro-rate charges accordingly, others insist that Triton must pay the entire cost of interconnection trunks and similar facilities. These charges are assessed even though the Commission has held that it is unlawful for an ILEC to do so.[16]

One way the Commission can address these market power issues is to centralize regulation of most aspects of CMRS interconnection at the federal level. **As** described above, the Commission is not compelled to use the Section 251/252 framework for CMRS

[15] Transiting charges can be paid either by the carrier that originates a call or by the carrier that terminates **a** call. A carrier should not, however, be responsible **for** paying for transiting both originated and terminated calls.

[16] Letter from A. Richard Metzger, Chief, Common Carrier Bureau, to Keith Davis, Southwestern Bell Telephone, **DA** 97-2726, 13 FCC Rcd 184 (1997).

interconnection because it has independent authority over CMRS interconnection under Sections 332 and 2(b). Centralizing regulation will greatly simplify the interconnection process for CMRS providers because they will have fewer occasions to deal with state regulators, many of which still are not fully aware of the nature of CMRS businesses or the specific requirements of CMRS operations. In particular, if the Commission were to eliminate state-by-state review and approval of CMRS-LEC interconnection agreements and vest that authority in the Wireless Telecommunications Bureau, CMRS providers could avoid the possibility of inconsistent decisions and, worse, decisions that withdraw critical and efficient indirect interconnection arrangements such as transiting from CMRS providers. Of course, the states must retain some jurisdiction over matters that fall within their specific authority, including those elements of state regulation identified by the Commission as governing "other terms and conditions" of CMRS.[17] Moreover, in some cases it may be appropriate to allow state involvement in interconnection issues, subject to the Commission's overriding rules. In general, however, the Commission will greatly improve the interconnection process if it assumes the authority Congress granted to it under Sections 332 and 2(b).

Finally, the Commission should not forbear from regulating CMRS-LEC interconnection. Under Section 10 of the Act, the Commission can forbear only if doing so will not result in harm to consumers and otherwise is in the public interest.[18] So long as ILECs retain market power in CMRS-LEC interconnection arrangements, neither of these conditions will be met. As described above, without the constraint of Commission regulation (and sometimes despite specific

[17] 47 U.S.C. § 332, ***Sprint Spectrum,*** L.P., ***et. al. v. State Corporation Commission of the State of Kansas, et. al.***, 149 F. 3d 1058 (10th Cir. 1998) (holding that "other terms and conditions" includes contribution to state universal service fund); ***Brown v. Washington/Baltimore Cellular,*** Inc. ***et.*** al., 109 F. Supp. 2d 421 (MD Dist. Ct. 2000) (holding that late fee charges were part of "other terms and conditions").

[18] 47 U.S.C. § 160(a).

regulatory requirements), ILECs would continue to impose unreasonable interconnection requirements on CMRS providers, which would raise costs to CMRS providers and, ultimately, their customers, without any concomitant consumer benefit. Further, it never can be in the public interest to permit an entity with market power to exercise that power. Unrestrained exercises of market power distort otherwise competitive marketplaces and lead to significant market inefficiencies. In those circumstances, regulation is not only desirable, but required. Thus, until ILECs lose their market power relative to CMRS providers, the Commission cannot forbear from regulating CMRS-LEC interconnection.

## IV. CONCLUSION

For all these reasons, Triton urges the Commission to adopt a bill-and-keep as the "default" compensation model for CMRS-LEC interconnection. Time and experience have demonstrated that a centralized, uniform federal regime for CMRS-LEC interconnection will best address the unique aspects of CMRS service. Bill and keep is not only a reasonable and efficient inter-carrier compensation mechanism, it is well within the Commission's legal authority to adopt. A bill and keep compensation model addresses the significant continuing market power ILECs maintain in their interconnection relationships with CMRS providers.

Respectfully submitted,

**TRITON PCS LICENSE COMPANY, L.L.C.**

Laura H Phillips

Laura H. Phillips
J.G. Harrington
Carlos M. Nalda

Its Attorneys

**DOW, LOHNES & ALBERTSON, PLLC**
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

August 21, 2001